

4/26/11 9:36:24
DK T BK 3,296 PG 227
DESOTO COUNTY, MS
W.E. DAVIS, CH CLERK

4/26/11 9:36:58
DK P BK 144 PG 190
DESOTO COUNTY, MS
W.E. DAVIS, CH CLERK

Instrument Prepared By and
After Recording Return To:

Harry E. Neblett, Jr. [MS Bar #3776]
Wyatt, Tarrant & Combs, LLP
1715 Aaron Brenner Drive, Suite 800
Memphis, Tennessee 38120
901-537-1000

Indexing Instruction:

Lots 2, 3, 4, 5, 9, 10, 12, 13, 14, 19, 20, 21, 22, 26,
29, 30, and 31, Section 34, Township 1 South,
Olive Branch, DeSoto County, Mississippi

Lot 51, Section B, Section 26,
Township 1 South, Range 6 West,
Olive Branch, DeSoto County, Mississippi

Grantor Name and Address:

Dogwood Properties
8195 Dexter Road, Suite 110
Cordova, Tennessee 38016

Beneficiary Name and Address:

Memphis Area Teachers' Credit Union
7845 Highway 64
Memphis, Tennessee 38133

THIS INSTRUMENT MODIFIES AND EXTENDS THE DEED OF TRUST FILED FOR RECORD IN BOOK 2,789, AT PAGE 679 IN THE OFFICE OF THE CHANCERY CLERK OF DESOTO COUNTY, MISSISSIPPI, AND THE ASSIGNMENT OF RENTS AND LEASES FILED FOR RECORD IN BOOK 122, AT PAGE 2, IN SAID OFFICE.

**CONSOLIDATION AND
MODIFICATION AGREEMENT**

THIS CONSOLIDATION AND MODIFICATION AGREEMENT ("Agreement") is made and entered into on this 20th day of April, 2011, by and between MEMPHIS AREA TEACHERS' CREDIT UNION, a federally chartered credit union ("Credit Union"); and DOGWOOD PROPERTIES, a Tennessee general partnership, formerly known as DOGWOOD PROPERTIES, LLC ("Borrower").

WITNESSETH:

WHEREAS, on September 13, 2007, Borrower executed that certain Promissory Note in favor of Credit Union in the original principal amount of \$3,590,518.61 ("Note 42"). Note 42 was made pursuant to the terms of that certain Business Loan Agreement dated as of even date with Note 42 ("Loan 42 Loan Agreement") and is secured by, *inter alia*, a Deed of Trust dated as of even date with Note 42 ("Loan 42 Tennessee Deed of Trust"), of record as Instrument No. 07143583 in the Register's Office of Shelby County, Tennessee, and a Deed of Trust dated as of even date with Note 42 ("Loan 42 Mississippi Deed of Trust", and together with the Loan 42 Tennessee Deed of Trust, the "Loan 42 Deeds of Trust"), of record at Book 2,789, Page 679, in the office of the Chancery Clerk of DeSoto County, Mississippi. Loan

42 is further secured by an Assignment of Rents and Leases dated as of even date with Note 42, and of record as Instrument No. 07143584 in the Register's Office of Shelby County, Tennessee ("Loan 42 Tennessee Assignment of Rents"), and by an Assignment of Rents and Leases dated as of even date with Note 42, of record at Book 122, Page 2, in the office of the Chancery Clerk of DeSoto County, Mississippi ("Loan 42 Mississippi Assignment of Rents", and together with the Loan 42 Tennessee Assignment of Rents, collectively the "Loan 42 Assignments of Rents"). Loan 42 is further secured by those certain Commercial Guaranty agreements, made by each of Jon C. McCreery and Phillip C. Chamberlain, II (together, "Guarantors") each dated as of even date with Note 42 ("Note 42 Guaranties", and together with Note 42, the Loan 42 Loan Agreement, the Loan 42 Deeds of Trust, the Loan 42 Assignments of Rents and all other documents or instruments which evidence and/or secure Loan 42 hereinafter collectively referred to as the "Loan 42 Documents");

WHEREAS, as of the date hereof, the principal balance of Note 42 as of the date of this Agreement is \$3,309,669.18;

WHEREAS, on May 29, 2008, Borrower executed that certain Promissory Note in favor of Credit Union, in the original principal amount of \$1,300,000.00 ("Note 43"). Note 43 was made pursuant to the terms of that certain Business Loan Agreement dated as of even date with Note 43 ("Loan 43 Loan Agreement") and is secured by, *inter alia*, a Deed of Trust dated as of even date with Note 43 ("Loan 43 Deed of Trust"), of record as Instrument No. 08081987 in the Register's Office for Shelby County, Tennessee, and by that certain Assignment of Rents and Leases dated as of even date with Note 43, of record as Instrument No. 08081988 in the Register's Office of Shelby County, Tennessee ("Loan 43 Assignment of Rents"), and further by those certain Commercial Guaranty agreements, made by Guarantors, each dated as of even date with Note 43 ("Note 43 Guaranties", and together with Note 43, the Loan 43 Loan Agreement, the Loan 43 Deed of Trust, the Loan 43 Assignments of Rents and all other documents or instruments which evidence and/or secure Loan 43 hereinafter collectively referred to as the "Loan 43 Documents")

WHEREAS, as of the date hereof, the principal balance of Note 43 as of the date of this Agreement is \$1,056,047.16;

WHEREAS, Note 42 and Note 43 are sometimes collectively referred to herein as the "Notes," and the Loan 42 Deeds of Trust and the Loan 43 Deed of Trust are sometimes collectively referred to herein as the "Deeds of Trust", and the Loan 42 Documents and the Loan 43 Documents are sometimes collectively referred to herein as the "Loan Documents";

WHEREAS, Borrower and Credit Union are also party to that certain Forbearance Agreement, dated March 3, 2010 ("Forbearance Agreement"), pursuant to which, Credit Union agreed to extend certain additional financial accommodations to Borrower and Guarantors, including forbearance from enforcing Credit Union's rights against Borrower and Guarantors under the Loan Documents, provided that Borrower and Guarantors complied with certain terms and conditions, all as set forth in greater detail in the Forbearance Agreement;

WHEREAS, in connection with the Forbearance Agreement, Borrower executed that certain Pledge and Security Agreement (Deposit Account), dated March 3, 2010 ("Security Agreement"), pursuant to which, Borrower agreed to maintain a deposit account with Credit Union, and to pledge said account as security for the indebtedness represented by the Notes; and

WHEREAS, Borrower desires to obtain from Credit Union a consolidation and modification of the terms of payment of Note 42 and Note 43, and to make certain modifications to the Forbearance Agreement and Security Agreement, and Credit Union is willing to grant said consolidation and

modifications upon the agreement of Borrower to make, keep and perform all of the terms, conditions and covenants hereinafter set forth.

NOW, THEREFORE, in consideration of the premises, the sum of Ten Dollars (\$10.00) cash in hand paid and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. Credit Union and Borrower hereby acknowledge and agree that the original maker and obligor under the Loan Documents, Dogwood Properties, LLC, a Tennessee limited liability company, has been merged into Dogwood Properties, a Tennessee general partnership pursuant to the provisions of Tennessee Code Annotated §48-244-103 and §48-249-704. A Certificate of Conversion was filed for record in the Register's Office of Shelby County, Tennessee as Instrument No. 08162032, and with the Tennessee Secretary of State on December 12, 2008. Borrower, as the surviving entity following the conversion and merger, hereby expressly assumes all obligations and liabilities of Dogwood Properties, LLC under the Loan Documents, in accordance with the provisions of the Tennessee Limited Liability Company Act.

2. The indebtedness evidenced by the Notes shall continue to be so evidenced, but shall hereafter be consolidated into a single indebtedness in the principal sum of Four Million Four Hundred Sixty-Seven Thousand Three Hundred Twenty Six and 45/100 Dollars (\$4,467,326.45) (sometimes referred to herein as the "Consolidated Debt"). The Consolidated Debt, as evidenced by the Notes, shall be payable without preference, priority or distinction as to any of the Notes over the other by reason of the priority of the execution thereof or the security therefore.

3. The terms of the Notes and Consolidated Debt are hereby modified so that same shall be paid, together with interest thereon from the date hereof at the rate of four and one-tenth percent (4.10%) as follows:

In equal installments of \$21,597.52 each, except as modified by Section 6.E. of this Agreement, commencing April 21, 2011 and continuing thereafter on the same day of each and every month to and including April 20, 2012, and on April 21, 2012 ("Maturity Date"), the entire unpaid principal balance and accrued but unpaid interest shall be due and payable in full. The payments of principal and interest set forth in this Section 3 shall be based on a thirty (30)-year amortization period, commencing on the date of this Agreement, and subject to change as set forth in Section 6.E. of this Agreement.

THE FINAL INSTALLMENT IS A BALLOON PAYMENT. CREDIT UNION HAS NO OBLIGATION TO EXTEND, MODIFY OR AMEND THE FINAL INSTALLMENT. All payments, including any prepayments, shall be applied first to accrued interest due on the Consolidated Debt, then to payment of principal of the Consolidated Debt, and then as set forth in Section 6.C. of this Agreement.

4. Credit Union agrees to make a notation upon its records showing that the Notes have been consolidated and modified as set forth herein.

5. The liens of the Deeds of Trust are hereby so extended that same shall not be barred by any applicable statute of limitations until ten (10) years from the Maturity Date, or for the maximum period of time allowed under applicable law, and the liens of the Deeds of Trust shall remain in full force and effect and unimpaired for a period of ten (10) years from the date of maturity of the Consolidated Debt as herein consolidated and modified, or for the maximum period of time allowed under applicable law.

6. The Forbearance Agreement is hereby modified and amended as follows, and except as expressly amended hereby, shall remain in full force and effect, in accordance with its terms and conditions. Defined terms used in this Section 6 but not defined herein shall have the meanings ascribed to them in the Forbearance Agreement:

A. Any and all references in the Forbearance Agreement to the indebtedness represented or evidenced by the Loan Documents shall mean and refer to the "Consolidated Debt", as defined in this Agreement, and the term "Consolidated Debt" as used in this Section 6 shall be synonymous and interchangeable with all such references to the indebtedness represented or evidenced by the Loan Documents;

B. Section 4 of the Forbearance Agreement shall require Borrower to provide, as of the date of this Agreement, an updated, current rent roll for the Loan Parcels certified by Borrower, together with copies of all leases currently in force (except to the extent already provided by Borrower), together with copies of any management agreements with third-party managers for the Loan Parcels, or any of them.

C. Sections 6(b)(i)-(iii) of the Forbearance Agreement are hereby deleted in their entirety, and replaced with the following:

- (i) First to the payment of accrued, but unpaid interest on the Consolidated Debt;
- (ii) Next, to the payment of the outstanding principal balance of the Consolidated Debt;
- (iii) To the extent that funds remain in the Blocked Account after the application of funds in accordance with the foregoing subsections (i) and (ii), such funds shall be retained in the Blocked Account until a reserve of Ten Thousand Dollars (\$10,000.00) ("Reserve") is established. The Reserve shall at all times thereafter be retained in the Blocked Account, and shall only be applied to future payments of principal and interest on the Consolidated Debt in the event that deposits of rental proceeds by Borrower into the Blocked Account fail to satisfy the required payments of principal and interest called for by this Agreement; and
- (iv) On a calendar quarterly basis, Lender will review the status of funds in the Blocked Account. In the event that there are funds available in the Blocked Account in excess of the Reserve ("Excess Funds"), and Lender has determined that the Excess Funds are not required for future debt servicing of the Consolidated Debt, then such Excess Funds shall be used on a quarterly basis for the payment of delinquent real property taxes assessed against the Loan Parcels. Lender may itself make such payments out of the Blocked Account in the name of Borrower, or may release such Excess Funds

to Borrower and direct that Borrower immediately utilize all such Excess Funds for the payment of delinquent real property taxes assessed against the Loan Parcels, in the manner requested by Lender. Borrower's failure to make such payments as directed by Lender shall be a Termination Event under Section 5(c)(viii) hereof.

D. Section 7 of the Forbearance Agreement is hereby deleted in its entirety, and replaced with the following:

7. Debt Service Payments.

Borrower shall make monthly payments of principal and interest in accordance with the terms and conditions of that certain Consolidation and Modification Agreement, dated April 20, 2011, by and between Credit Union and Borrower, as the same may be modified and amended from time to time.

E. Section 9 of the Forbearance Agreement shall be amended by deleting the last sentence thereof in its entirety, and replacing the same with the following:

All proceeds from the sale of any Loan Parcel shall be applied to the payment of the outstanding principal balance of the Consolidated Debt. At any time from and after the date of this Agreement and during the term thereof, or any extension thereof, in which the total net proceeds from the sale of Loan Parcels exceeds Three Hundred Thousand Dollars (\$300,000.00) following any prior reamortization of scheduled payments of interest and principal of the Consolidated Debt, Credit Union shall reamortize the scheduled payments of interest and principal of the Consolidated Debt over the remainder of the thirty (30)-year amortization period described in Section 3 of that certain Consolidation and Modification Agreement, dated April 20, 2011, by and between Credit Union and Borrower, as the same may be modified and amended from time to time.

F. Schedule A to the Forbearance Agreement is hereby deleted in its entirety, and any references contained in the Forbearance Agreement to Schedule A shall be null and void, and replaced and superseded by the payment and balance provisions set forth in that certain Consolidation and Modification Agreement, dated April 20, 2011, by and between Credit Union and Borrower.

7. Credit Union and Borrower hereby agree that concurrently with the execution of this Agreement, Credit Union shall pay, or make arrangements for the payment of, all delinquent real property taxes assessed against the Loan Parcels (as defined in the Forbearance Agreement) for the 2008 tax year ("2008 Tax Payment"). The full amount of the 2008 Tax Payment shall be added to the principal outstanding balance of the Consolidated Debt as of the date of this Agreement, payable in accordance with the terms and conditions of this Agreement.

8. In consideration of the consolidation and modification granted herein, Borrower promises to pay the Consolidated Debt evidenced by the Notes as set forth hereinabove, to keep and perform all the covenants, terms and conditions contained in any agreement or document governing the terms and conditions of the borrowing affected hereby, in default of which the holder of said indebtedness, at its option, may declare said indebtedness accelerated and matured for all purposes, and may proceed to foreclose on any of the collateral held to secure same, or to exercise, at its option, any right or privilege granted in any of said agreements or documents or by law. It is expressly understood and agreed that the terms, covenants and conditions of all instruments evidencing or securing the aforesaid indebtedness shall remain in full force and effect, and shall in no manner be affected by the execution of this Agreement except as the same are expressly consolidated and modified herein. All property, real or personal, and

other collateral held by Credit Union to secure Note 42 or Note 43, shall secure the Consolidated Debt, and a default in any instrument, document or agreement pertaining to either Note 42 or Note 43 shall constitute a default in the Consolidated Debt. The public and all third parties are hereby placed on notice that each and all of the Deeds of Trust, and the real property and collateral described therein and covered thereby, shall secure in full all of the Consolidated Debt, inclusive of principal, accrued interest, and any and all other costs, expenses and charges arising therefrom or relating thereto.

9. The Consolidated Debt (principal and accrued interest) as consolidated and modified hereby shall bear interest, from the date of maturity (whether by demand, acceleration or otherwise) until the same is fully satisfied, at the maximum rate of interest which Credit Union is permitted by law to contract for and charge on the date hereof or at such maximum rate so permitted on the maturity date hereof, whichever is greater. Any renewal or extension of the debt shall bear interest at the rate of interest set by Credit Union at that time, not to exceed the maximum rate which Credit Union is permitted by law to contract for and charge on the date hereof or such maximum rate so permitted on the date of such renewal or extension, whichever is greater. The Borrower agrees to pay all expenses directly related to the debt incurred or to be incurred in its making, servicing or collection, including reasonable attorney's fees. The Borrower further agrees to pay to Credit Union, upon demand, all charges for services rendered or to be rendered by its officers and employees directly for inspecting, verifying and servicing the collateral securing the debt and for the collection thereof.

10. The execution of this Agreement does not discharge any of the obligors, sureties, endorsers or guarantors of the Notes, and all rights of the Credit Union against any or all of the same are expressly reserved. Guarantors join herein to acknowledge their respective continuing guaranties of the Notes, as consolidated and amended hereby.

11. Borrower acknowledges and agrees that all attorney's fees, costs, and expenses associated with the negotiations for this Agreement, and the preparation, execution, delivery, and recording thereof shall be paid on demand from funds available in the Blocked Account.

12. Borrower expressly waives all equity of redemption, statutory right of redemption, and all other rights and exemptions of every kind concerning the property described in the Deeds of Trust.

13. A full release of the Deeds of Trust shall constitute a release of this Agreement.

14. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, next of kin, successors, assigns, transferees and grantees, and shall be governed and construed in accordance with the laws of the State of Tennessee, except with respect to interest which shall be governed and construed in accordance with Federal Law.


[SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE TO CONSOLIDATION AND MODIFICATION AGREEMENT]

IN WITNESS WHEREOF, the parties hereunto have executed this Agreement on the date first above written. Counterpart signature hereof is expressly permitted.

CREDIT UNION:

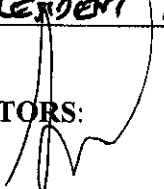
MEMPHIS AREA TEACHERS' CREDIT
UNION

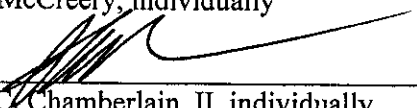
By: 

Name: DANIEL WEICKENAND

Title: PRESIDENT AND CEO


GUARANTORS:

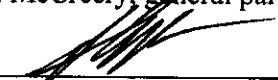

Jon E. McCreery, individually


Philip C. Chamberlain, II, individually

BORROWER:

DOGWOOD PROPERTIES, a Tennessee general
partnership

By: 
Jon E. McCreery, general partner

By: 
Philip C. Chamberlain, II, general partner

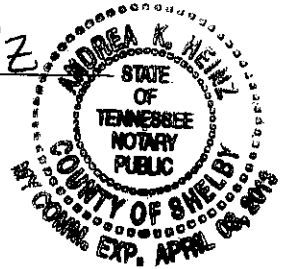
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STATE OF TENNESSEE

DK P BK 144 PG 197

COUNTY OF SHELBY

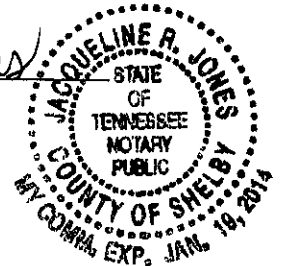
Personally appeared before me, the undersigned authority in and for the said County and State, on this 20th day of April, 2011, within my jurisdiction, the within named DANIEL WEICKENAND, who acknowledged that (he)(she) is the PRESIDENT AND CEO of MEMPHIS AREA TEACHERS' CREDIT UNION, a federally chartered credit union, and that for and on behalf of the said corporation, and as its act and deed, (he)(she) executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

My Commission Expires: April 3, 2013Andrea K. Heuriz
Notary Public

STATE OF TENNESSEE

COUNTY OF SHELBY

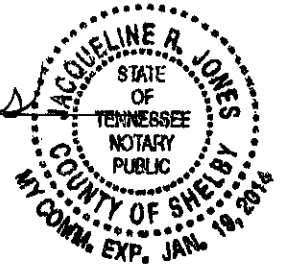
Personally appeared before me, the undersigned authority in and for the said County and State, on this 20th day of April, 2011, within my jurisdiction, the within named JON E. MCCREERY, who acknowledged that he is the General Partner of DOGWOOD PROPERTIES, a Tennessee general partnership, and that in said representative capacity as the General Partner, for and on behalf of the said general partnership, and as its act and deed, he executed the above and foregoing instrument, after first having been duly authorized by said general partnership so to do.

My Commission Expires: 1/19/2014Jacqueline R. Jones
Notary Public

STATE OF TENNESSEE

COUNTY OF SHELBY

Personally appeared before me, the undersigned authority in and for the said County and State, on this 20th day of April, 2011, within my jurisdiction, the within named PHILIP C. CHAMBERLAIN, II, who acknowledged that he is the General Partner of DOGWOOD PROPERTIES, a Tennessee general partnership, and that in said representative capacity as the General Partner, for and on behalf of the said general partnership, and as its act and deed, he executed the above and foregoing instrument, after first having been duly authorized by said general partnership so to do.

My Commission Expires: 1/19/2014Jacqueline R. Jones
Notary Public

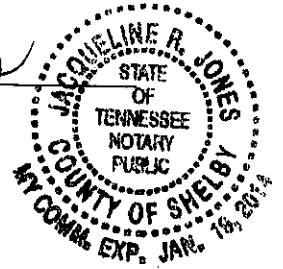
STATE OF TENNESSEE

COUNTY OF SHELBY

Personally appeared before me, the undersigned authority in and for the said County and State, on this 20th day of April, 2011, within my jurisdiction, the within named JON E. MCCREERY, who acknowledged that he executed the above and foregoing instrument as his free and voluntary act and deed.

My Commission Expires: 1/19/2014

Jacqueline R. Jones
Notary Public



STATE OF TENNESSEE

COUNTY OF SHELBY

Personally appeared before me, the undersigned authority in and for the said County and State, on this 20th day of April, 2011, within my jurisdiction, the within named PHILIP C. CHAMBERLAIN, II, who acknowledged that he executed the above and foregoing instrument as his free and voluntary act and deed.

My Commission Expires: 1/19/2014

Jacqueline R. Jones
Notary Public

